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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/749,583
Filing Date: December 31, 2003
Appellant(s): CROMER ET AL.

Jeffrey S Schubert
Reg. No. 45670

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed Feb. 12, 2010 appealing from the Office action mailed Aug. 14, 2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-7, 12-18, 38-41 and 48-50.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

7093124	Girard	10-2001
20020188837	Dayan et al.	6-2001
20040267926	Rothman et al.	6-2003
20040163008	Kim	2-2003
6606709	Connery et al.	10-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. Claims 1-7, 12, 15-18, 38, 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Girard (US Patent No. 7,093,124) and in view of Dayan et al. (US Pub. No. 2002/0188837) and in view of Rothman et al (US Pub. No. 2004/0267926).

As per claim 1, Girard teaches:

selecting the bootable image on the remote client to boot the remote client, the bootable image comprising software to determine the trustworthiness of a software application on a maintenance server prior to executing the software application, for the remote client [Fig. 1, col. 7 lines 1-19, Fig. 4, col. 7 lines 35-48, Fig. 5, 6]; generating a wake-on-LAN packet and transmitting the wake-on-LAN packet to the remote client to wake up the remote client and to instruct a pre-boot application of the remote client to boot via the bootable image [Fig. 6, col. 8 lines 10-43].

Girard teaches the wake-on-LAN packet to wake up and/or boot the remote client. Girard doesn't expressively mention a partition identification information.

Dayan teaches generating a wake-on-LAN packet with an identification/address information [Fig. 4, paragraph 0008, 0010, 0034, 0035]; and transmitting the wake-on-LAN packet to the remote client to wake up the remote client and to instruct a pre-boot application of the remote client to boot via the bootable image [Fig. 4, paragraph 0008, 0010, 0034, 0035].

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Dayan with Girard to include directive information into the wake-on-LAN packet (magic packet), since one would have been motivated to boot to a designated partition in a nonvolatile storage unit without requiring a local operator [Dayan, paragraph 0007].

Dayan teaches generating a wake-on-LAN packet with an identification/address information. Girard and Dayan do not expressively mention a partition identification information.

Further, Rothman teaches a packet with a partition identification, the partition identification comprising an address of a location of the bootable image, to identify the location within a local resource of the remote client [paragraph 0037, 0033, Fig. 1, 4].

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Rothman with Girard and Dayan to access the content of the remote computer for performing the requested tasks to control the remote system without depend on the vendor of the remote computer [Rothman, paragraph 0004 lines 13-16, 0012].

As per claim 2, the rejection of claim 1 is incorporated and Dayan teaches: selecting the bootable image from a drive, the drive being internal to the remote client [Fig. 4, paragraph 0034, 0035].

As per claim 3, the rejection of claim 1 is incorporated and Dayan teaches: selecting the bootable image from a secure resource of the remote client [Fig. 4, paragraph 0034, 0035].

As per claim 4, the rejection of claim 1 is incorporated and Dayan teaches: resource comprises selecting the bootable image from a hidden partition associated with the remote client [Fig. 4, paragraph 0034, 0035].

As per claim 5, the rejection of claim 1 is incorporated and Dayan teaches: the information to be associated with the bootable image by the remote client [Fig. 4, paragraph 0034, 0035].

Rothman teaches: selecting logical address for the bootable image (content of the memory), the logical address to be associated with the bootable image (content of the memory) by the remote client [Fig. 1, 4, paragraph 0037, 0035].

As per claim 6, the rejection of claim 1 is incorporated and Dayan teaches: extending the wake-on-LAN packet with the partition identification [paragraph 0008, 0010].

As per claim 7, the rejection of claim 1 is incorporated and Dayan teaches: generating a parameter to associate with the partition identification to provide a post-boot instruction to the remote client [Fig. 4, paragraph 0008, 0010, 0034, 0035].

As per claim 12, the rejection of claim 1 is incorporated and Girard teaches: transmitting comprises broadcasting the wake-on-LAN packet to the remote client and at least one other remote client [Fig. 1].

As per claim 15, it encompasses limitations that are similar to those of claim 1. Thus, it is rejected with the same rationale applied against claim 1 above.

As per claim 16, the rejection of claim 15 is incorporated and it encompasses limitations that are similar to those of claim 3. Thus, it is rejected with the same rationale applied against claim 3 above.

As per claim 17, the rejection of claim 15 is incorporated and it encompasses limitations that are similar to those of claim 6. Thus, it is rejected with the same rationale applied against claim 6 above.

As per claim 18, the rejection of claim 15 is incorporated and Girard teaches: broadcasting the wake-on-LAN packet to the remote client and at least one other remote client [Fig. 1].

As per claim 38, the rejection of claim 1 is incorporated and Girard teaches: downloading the software application from the maintenance server to the remote client subject to a determination of the trustworthiness of the maintenance server by the remote client [Fig. 1, col. 7 lines 3-19, Fig. 4, col. 7 lines 35-48, Fig. 5, 6].

As per claim 39, the rejection of claim 1 is incorporated and Girard teaches: passing a parameter to the bootable image to initiate the software application on the maintenance server subject to a determination of the trustworthiness of the maintenance server by the remote client [Fig. 1, col. 7 lines 3-19, Fig. 4, col. 7 lines 35-48, Fig. 5, 6].

As per claim 41, the rejection of claim 15 is incorporated and it encompasses limitations that are similar to those of claim 38. Thus, it is rejected with the same rationale applied against claim 38 above.

2. Claims 13, 14 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Girard (US Patent No. 7,093,124) in view of Dayan et al. (US Pub. No. 2002/0188837) in view of Rothman et al (US Pub. No. 2004/0267926) and in view of Kim (US Pub. No. 2004/0163008).

As per claim 13, Girard teaches:

a server computer system in communication with at least one client computer system, the server computer system comprises a processor capable to selecting the bootable image on the remote client to boot the remote client, the bootable image comprising software to determine the trustworthiness of a software application on a maintenance server prior to executing the software application, for the remote client [Fig. 1, col. 7 lines 1-19, Fig. 4, col. 7 lines 35-48, Fig. 5, 6]; wherein the server computer system is capable of generating a wake-on-LAN packet and wherein the server computer system is capable of transmitting the wake-on-LAN packet to the remote client to wake up the remote client and to instruct a pre-boot application of the remote client to boot via the bootable image [Fig. 6, col. 8 lines 10-43].

Girard teaches the wake-on-LAN packet to wake up and/or boot the remote client. Girard doesn't expressively mention a partition identification information.

Dayan teaches generating a wake-on-LAN packet with an identification/address information [Fig. 4, paragraph 0008, 0010, 0034, 0035]; and transmitting the wake-on-LAN packet to the remote client to wake up the remote client and to instruct a pre-boot application of the remote client to boot via the bootable image [Fig. 4, paragraph 0008, 0010, 0034, 0035].

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Dayan with Girard to include directive information into the wake-on-LAN packet (magic packet), since one would have been motivated to boot to a designated partition in a nonvolatile storage unit without requiring a local operator [Dayan, paragraph 0007].

Dayan teaches generating a wake-on-LAN packet with an identification/address information. Girard and Dayan do not expressively mention a partition identification information.

Further, Rothman teaches a packet with a partition identification, the partition identification comprising an address of a location of the bootable image, to identify the location within a local resource of the remote client [paragraph 0037, 0033, Fig. 1, 4].

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Rothman with Girard and Dayan to access the content of the remote computer for performing the requested tasks to control the remote

system without depend on the vendor of the remote computer [Rothman, paragraph 0004 lines 13-16, 0012].

Girard, Dayan and Rothman do not expressively mention a database for one or more clients.

Further, in an analogous art, Kim teaches: a database, the database comprising an indication of one or more clients and the status of their wake-on-LAN functionality [Fig. 2, 6, paragraph 0043].

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Kim with Girard, Dayan and Rothman, since one would have been motivated to mange end user application software and services available on computer network from a central location and reduce the overall cost of the computers on the network [Kim, paragraph 0010, 0012].

As per claim14, the rejection of claim 13 is incorporated and Girard teaches: an Ethernet network coupled to the server computer system and the at least one client computer system [Fig. 1].

As per claim 40, the rejection of claim 13 is incorporated and Girard teaches: wherein the server computer system is capable of downloading the software application by the maintenance server to the remote client subject to a determination of the trustworthiness of the maintenance server by the remote client [Fig. 1, col. 7 lines 3-19, Fig. 4, col. 7 lines 35-48, Fig. 5, 6].

3. Claims 48, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Girard (US Patent No. 7,093,124) in view of Dayan et al. (US Pub. No. 2002/0188837) in view of Rothman et al (US Pub. No. 2004/0267926) and in view of Connery et al. (US Patent No. 6,606,709).

As per claim 48, the rejection of claim 1 is incorporated and Girard and Dayan teach the server computer system is capable of generating a wake-on-LAN packet as above.

Girard, Dayan and Rothman do not expressly mention a *parameter* for the bootable image.

However, Connery teaches the server computer system is capable of generating a wake-on-LAN packet with a parameter for the bootable image, the parameter to instruct the bootable image to initiate the software application [Figs. 1, 4, 5, 6, col. 7 lines 1-43, col. 12 lines 25-67].

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Connery with Girard, Dayan and Rothman to include parameter for bootable image, since one would have been motivated to provide greater flexibility and functionality, without limiting the security, at low costs [Connery, col. 1 lines 65-67, col. 2 lines 1-3].

As per claim 50, the rejection of claim 15 is incorporated and it encompasses limitations that are similar to those of claim 48. Thus, it is rejected with the same rationale applied against claim 48 above.

4. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Girard (US Patent No. 7,093,124) in view of Dayan et al. (US Pub. No. 2002/0188837) in view of Rothman et al (US Pub. No. 2004/0267926) and in view of Kim (US Pub. No. 2004/0163008) and in view of Connery et al. (US Patent No. 6,606,709).

As per claim 49, the rejection of claim 13 is incorporated and Girard and Dayan teach the server computer system is capable of generating a wake-on-LAN packet as above. Girard, Dayan, Rothman and Kim do not expressly mention a parameter for the bootable image.

However, Connery teaches the server computer system is capable of generating a wake-on-LAN packet with a parameter for the bootable image, the parameter to instruct the bootable image to initiate the software application [Figs. 1, 4, 5, 6, col. 7 lines 1-43, col. 12 lines 25-67].

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Connery with Girard, Dayan, Rothman and Kim to include parameter for bootable image, since one would have been motivated to provide greater flexibility and functionality, without limiting the security, at low costs [Connery, col. 1 lines 65-67, col. 2 lines 1-3].

(10) Response to Argument

A. Claims 1-7, 12, 15-18, 38, 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Girard in view of Dayan and in view of Rothman

1. Claims 1 and 15

Regarding to appellant's argument to claims 1, 15, Examiner maintains since Girard discloses a mechanism to improve authentication for remote management of computer system. As shown in Fig. 1, a computer system 110 (source device) and a computer system 120 (receiving device or remote boot server) coupled via a transmission medium 130. A computer system 120 is powered up by a remote boot server 110. The computer system 120 communicates with the remote boot server in order to authenticate the boot server and downloads the services as shown in Figs. 4, 5. The remote boot code performs an integrity and authorization check of the boot image and then executes (by selecting) the downloaded boot code on the computer system 110 (i.e. remote client) [Fig. 4, col. 7 1-67, Fig. 5]. Therefore, Girard teaches "*selecting a bootable image on the remote client*". As shown in Fig. 6 of Girard, the management service computer (e.g. source computer/server 110) awakes the computer system 120 by sending wake-up packet. The network controller of the computer system 120 recognizes the wake-up packet and sends a wake-event to the memory controller. The memory controller turns power back on to the full system. The computer system 110 is allowed to execute the necessary management services at the computer system 120,

after authentication step. Therefore, Girard teaches generating and transmitting the wake-on-LAN packet. Further, Dayan's invention relates to boot a designated partition in a non-volatile storage unit storing code to conduct maintenance/recovery operation without requiring a local operator, by setting one or more bits in a Boot register or inserting directive information from a magic packet (wake-up packet) in a register. The computer system receives the magic packet, which includes the destination address of the network interface card repeated a certain number of times and directive information, from the network. The destination address, repeated a certain number of times, indicates to the network interface card to power up the processing unit and the directive information indicates to the BIOS to boot a designated partition in a non-volatile storage [Fig. 4, paragraph 0034, 0035]. Therefore, Dayan teaches a wake-on-LAN packet that provides location (i.e. partition identification) of bootable image to instruct the pre-boot application of the remote client to boot via the bootable image. Further, Rothman's invention relates to accessing the firmware of a remote computer system, wherein the remote computer receives the packet. The request packet contains one or more task for the remote computer to perform. The task includes instructing the firmware to execute code stored on the remote computer. The request packet contains the memory address to access the content of the remote computer. Therefore, Rothman teaches the request packet with an address of a location of the execute code (e.g. bootable image) to identify the location within the local resource of the remote client. In this case, the combination Girard, Dayan and Rothman teaches the claim limitation "selecting a bootable image on the remote client to boot the remote client, the bootable image

comprising software to determine the trustworthiness of a software application on a maintenance server prior to executing the software application, for a remote client; generating a wake-on-LAN packet with a partition identification, the partition identification comprising an address of a location of the bootable image, to identify the location within a local resource of the remote client; and transmitting the wake-on-LAN packet to the remote client to wake up the remote client and to instruct a pre-boot application of the remote client to boot via the bootable image".

Furthermore, the examiner recognizes that obviousness can also be established by combining or modifying the teaching of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F. 2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ 2nd 1941 (Fed. Cir 1992). In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper use of hindsight, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The combination is sufficient as one of ordinary skill in the art at the time the invention was made, since one would have been motivated to boot to a designated partition in a nonvolatile storage unit without requiring a local

operator [Dayan, paragraph 0007] and to access the content of the remote computer for performing the requested tasks to control the remote system without depend on the vendor of the remote computer [Rothman, paragraph 0004 lines 13-16, 0012].

2. Claims 2-7, 12, 38-39 and 48

Examiner would point out that, arguments with respect to claim 1 have been traversed as indicated above and therefore, arguments with respect to claims 2-7, 12, 38-39, 48 are traversed with the same rationale thereto.

3. Claims 16-18, 41 and 50

Examiner would point out that, arguments with respect to claim 15 have been traversed as indicated above and therefore, arguments with respect to claims 16-18, 41 and 50 are traversed with the same rationale thereto.

B. Claims 1-7, 12, 15-18, 38, 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Girard in view of Dayan, in view of Rothman and in view of Kim

1. Claim 13

Regarding to appellant's argument to claim 13, Examiner maintains since Girard discloses a computer system 110 (source device) and a computer system 120 (receiving device or remote boot server) coupled via a transmission medium 130, as

shown in Fig. 1. A computer system 120 is powered up by a remote boot server 110. The computer system 120 communicates with the remote boot server in order to authenticate the boot server and downloads the services as shown in Figs. 4, 5. The remote boot code performs an integrity and authorization check of the boot image and then executes (by selecting) the downloaded boot code on the computer system 110 (i.e. remote client) [Fig. 4, col. 7 1-67, Fig. 5]. Therefore, Girard teaches "*selecting a bootable image on the remote client*". As shown in Fig. 6 of Girard, the management service computer (e.g. source computer/server 110) awakes the computer system 120 by sending wake-up packet. The network controller of the computer system 120 recognizes the wake-up packet and sends a wake-event to the memory controller. The memory controller turns power back on to the full system. The computer system 110 is allowed to execute the necessary management services at the computer system 120, after authentication step. Therefore, Girard teaches generating and transmitting the wake-on-LAN packet. Further, Dayan's invention relates to boot a designated partition in a non-volatile storage unit storing code to conduct maintenance/recovery operation without requiring a local operator, by setting one or more bits in a Boot register or inserting directive information from a magic packet (wake-up packet) in a register. The computer system receives the magic packet, which includes the destination address of the network interface card repeated a certain number of times and directive information, from the network. The destination address, repeated a certain number of times, indicates to the network interface card to power up the processing unit and the directive information indicates to the BIOS to boot a designated partition in a non-volatile storage

[Fig. 4, paragraph 0034, 0035]. Therefore, Dayan teaches a wake-on-LAN packet that provides location (i.e. partition identification) of bootable image to instruct the pre-boot application of the remote client to boot via the bootable image. Further, Rothman's invention relates to accessing the firmware of a remote computer system, wherein the remote computer receives the packet. The request packet contains one or more task for the remote computer to perform. The task includes instructing the firmware to execute code stored on the remote computer. The request packet contains the memory address to access the content of the remote computer. Therefore, Rothman teaches the request packet with an address of a location of the execute code (e.g. bootable image), to identify the location within the local resource of the remote client. Further, Kim's invention relates to remote system management and operation services in computer networks that determine when each of a plurality of management clients is to load a new disk image according to its status and that generates an instruction to load the new disk image. The management server 215 manages one or more of the management clients 220 by keeping track of their status by accessing a database 245 that stores status information regarding each of the management clients 220 and other information that can be used for the determination as to whether and when selected management operations are to take place. As shown in Figs. 5-7, the management server performs the management operation on the management clients using the wake-on-LAN functionality. Therefore, Kim teaches the database that stores the status information of the management clients. Examiner would point out that, the features upon which appellant relies (i.e., "... *maintaining an address or access to an address* for a bootable

image on the client") is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In this case, the combination Girard, Dayan and Rothman teaches the claim subject matter. Furthermore, the examiner recognizes that obviousness can also be established by combining or modifying the teaching of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F. 2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ 2nd 1941 (Fed. Cir 1992). The combination is sufficient as one of ordinary skill in the art at the time the invention was made, since one would have been motivated to boot to a designated partition in a nonvolatile storage unit without requiring a local operator [Dayan, paragraph 0007] and to access the content of the remote computer for performing the requested tasks to control the remote system without depend on the vendor of the remote computer [Rothman, paragraph 0004 lines 13-16, 0012] and to manage end user application software and services available on computer network from a central location so it allows automated and centralized management of network, while increasing the processing power of the network and reduce the overall cost of the computers on the network [Kim, paragraph 0010, 0012, 0040] .

2. Claims 14 and 40

Examiner would point out that, arguments with respect to claim 13 have been traversed as indicated above and therefore, arguments with respect to claims 14 and 40 are traversed with the same rationale thereto.

C. _____ Claims 48 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Girard in view of Dayan, in view of Rothman and in view of Connery

Examiner would point out that, arguments with respect to claims 1 and 15 have been traversed as indicated above and therefore, arguments with respect to claims 48 and 50 are traversed with the same rationale thereto. Further, Connery's invention relates to management of computer network by securely issuing command across the network to wake-up or execute other system and power management functions of the end stations (client computers). Fig. 4 illustrates a packet format for an extended "Magic packet" Wake On LAN protocol, which includes various command and parameter to instruct the remote client for Wake On LAN wake up procedure [Figs. 4-6, col. 7 lines 1-43, col. 12 lines 25-67]. Therefore, the combination of Girard, Dayan, Rothman and Connery teaches the claim subject matter.

D. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Girard in view of Dayan, in view of Rothman, in view of Kim and in view of Connery

Examiner would point out that, arguments with respect to claim 13 have been traversed as indicated above and therefore, arguments with respect to claim 49 is traversed with the same rationale thereto. Further, Connery's invention relates to management of computer network by securely issuing command across the network to wake-up or execute other system and power management functions of the end stations (client computers). Fig. 4 illustrates a packet format for an extended "Magic packet" Wake On LAN protocol, which includes various command and parameter to instruct the remote client for Wake On LAN wake up procedure [Figs. 4-6, col. 7 lines 1-43, col. 12 lines 25-67]. Therefore, the combination of Girard, Dayan, Rothman and Connery teaches the claim subject matter.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Nirav Patel

/Nirav Patel/

Examiner, Art Unit 2435

Conferees:

/Beemnet W Dada/

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